Goldtex, Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC. Cases 11–CA–14824 and 11–CA–14864

December 16, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The question presented here is whether the judge correctly found that the Respondent violated Section 8(a)(3) and (1) of the Act when it laid off employees in November 1991.[1]

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Goldtex, Inc., Goldsboro, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] On September 29, 1992, Administrative Law Judge Philip P. McLeod issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Jasper C. Brown, Jr., Esq., for the General Counsel.
Thomas H. Keim, Jr., Esq. (Edwards, Ballard, Bishio, Sturm, Clark and Keim, P.A.), of Spartenburg, South Carolina, for the Respondent.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. I heard this case in Goldsboro, North Carolina, on May 20 and 21, 1992. The charges which gave rise to this case were filed by Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC (the Union) against Goldtex, Inc. (Respondent) on January 7 and February 11, 1992. On March 17, 1992, an order consolidating cases, consolidated complaint and notice of hearing issued which alleges, inter alia, that Respondent violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act) by laying off/terminating employees Johnny F. Gervin, Bobby Richardson, James R. Reid, Bobby R. Rutter, and Melvin D. Wright because of their activities on behalf of, or support for, the Union, and because Gervin testified before an administrative law judge in a related proceeding before the Board.

In its answer to the consolidated complaint, as amended at the trial, Respondent admitted certain allegations including the filing and serving of the charges; its status as an employer within the meaning of the Act; the status of the Union as a labor organization within the meaning of the Act; and the status of certain individuals as supervisors and agents of Respondent within the meaning of the Act. Respondent denied having engaged in any conduct which would constitute an unfair labor practice within the meaning of the Act.

At the trial, all parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. At the trial on May 21, the parties reached a non-Board settlement concerning allegations involving Johnny Gervin. As a result, counsel for General Counsel withdrew allegations that Gervin was laid off/terminated in violation of Section 8(a)(3) and (4) of the Act. However, the parties stipulated that while no findings of violations of the Act would therefore be appropriate, the parties would be allowed to use the evidence relating to Gervin's layoff as background evidence for the remaining issues in the case. Accordingly, Gervin's layoff/termination is discussed in full below, but no legal findings or conclusions are drawn regarding Gervin.

Following the close of the trial, counsel for General Counsel and the Respondent both filed timely briefs with me which have been duly considered.

On the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Goldtex, Inc. is, and has been at all times material herein, a Delaware corporation with a plant and warehouse located at Goldsboro, North Carolina, where it is engaged in dyeing and finishing woven and knitted fabrics. In the course and conduct of its business operations, Respondent annually purchases and receives at its North Carolina facility goods and raw materials valued in excess of $50,000 directly from points located outside the State of North Carolina. Respondent also annually sells and ships from its North Carolina facility products valued in excess of $50,000 directly to points outside the State of North Carolina.

Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC is, and has at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

At its Goldsboro, North Carolina facility, Respondent is engaged in the business of dyeing, printing, and finishing fabric. It employees approximately 275 to 300 production and maintenance employees. In December 1989, Respondent's employees began a campaign to organize and be rep-

resented by Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC. The Union filed a petition for an election with the Board on January 8, 1990, and an election was held on March 1, 1990. The Union lost this election by a substantial margin.

B. *Respondent's Past Practice Concerning Layoffs*

In March 1990, approximately 50 employees were laid off by Respondent. Respondent's president, Will Hopper, acknowledged that seniority was the criteria utilized in selecting employees for this layoff. Further, various employees testified credibly that several layoffs have occurred in recent years and that in each of these previous layoffs, seniority was used as the basis for laying off employees. The record supports a conclusion that prior to November 1991, layoffs of employees, regardless of how small or how large, were treated by Respondent as true layoffs, i.e., temporary in nature, and employees were selected on the basis of seniority.

The record also reflects that prior to the advent of union activity at Respondent's facility, Respondent did not have an employee handbook setting forth rules of conduct and company policies. In May or June 1990, approximately 3 months after the Board-conducted election, Respondent implemented an employee handbook. This handbook is lengthy (29 pages) and detailed, covering basic policies and procedures, an equal opportunity policy, a statement on unionism, a drug and alcohol policy, policies on paydays, meals, break periods, holidays, and vacations, to name only a few. It also describes a retirement plan, insurance coverage, a promotion policy, and much more. It sets forth a specific and detailed procedure entitled ''Layoffs And Recall From Layoffs.'' In order to give it accurate and adequate consideration, this policy is quoted in its entirety:

> While it is a goal of the Company to provide steady employment, it may be necessary to adjust or reduce the workforce to meet current business conditions or production levels. If this should occur, you will be given as much advance notice as possible, and we will try to give you an estimate as to how long a layoff will last. In the event this occurs, the following criteria will apply:
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> 1. Employees in a temporary status will be laid off.
> 2. Employees who wish to take voluntary layoff.
> 3. If a further reduction is required, regular employees will be laid off by department and classification depending upon length of service with the Company, provided the remaining employees can maintain the operation in a satisfactory manner.
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> Employees shall be recalled by department and classification in reverse order from the order of layoff provided that they can do the work available without additional training. An employee may stay on layoff status for six (6) months, or a period of time equal to the length of their employment, whichever is less.
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> During any period of layoff, an employee who wishes to return to work shall keep their current address and telephone number on file so the Company can contact the employee concerning any openings. Failure to contact the Personnel Department within five (5) days or to report for work within ten (10) days from the postmark on the letter of notice of opening may cause the loss of all seniority standing and opportunity for recall.
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> Layoffs may cause a loss in group health, life, and other employee benefits. The benefit booklets furnished to employees summarize continuation and conversion rights. Employees should consult the Personnel Department if they have questions concerning benefits upon layoff.

C. *The Prior Unfair Labor Practice Case*

On November 5 through 8, 1991, a hearing was held before Administrative Law Judge J. Pargen Robertson involving allegations that Respondent had engaged in numerous unfair labor practices during the organizing campaign. Employee Johnny Gervin was one of the main employee witnesses called to testify by counsel for General Counsel. Gervin testified concerning conversations with Supervisor James Williams about the Union; statements made by Will Hopper, Respondent's president, at employee meetings concerning the Union; and a private conversation between him and Hopper concerning the Union. In each case, Gervin's testimony was credited over the testimony of Respondent's witnesses, including Hopper. On the basis of Gervin's testimony, Respondent was found to have threatened employees that they would be working less hours and that things would pick up after the Board-conducted election; to have solicited employees to withdraw their union authorization cards; and to have promised employees that there would be changes at Respondent's facility after the Board-conducted election.

After testifying on November 4, Gervin sat down in the back of the hearing room. Gervin testified that after he sat down, he noticed that Respondent's director of human resources, Dave Parsons, who had been sitting in the hearing room as Gervin testified, held up a note pad in such a way that Gervin could see his name on the pad. Employee Michael Holloway, who was sitting beside Gervin, also noticed Gervin's name on Parsons' note pad. Holloway testified that he observed other names on the note pad as well, including his own, but he recalled that Gervin's name had an ''X'' beside it. Parsons admits he held up a note pad as described which contained the names of employees, including Gervin's. Parsons testified that he was simply helping the court reporter, who was sitting several feet away from him, by providing the court reporter with the names and spelling of the various witnesses. Parsons denied that he was attempting to signal to Gervin that his name was on the note pad. Parson's testified rather incredibly that he was not even aware Gervin was in the hearing room at the time.

Just a few days after Gervin testified, on November 13, Gervin was permanently laid off, i.e., terminated. This matter is discussed in greater detail below.

In addition to the matters testified to by Gervin, Judge Robertson found that Respondent interrogated employees about their union activities; threatened employees with loss of jobs; prohibited employees from distributing union leaflets during nonworktime in nonwork areas; threatened employees that it would be futile to support the Union; threatened employees that Respondent would close its doors over the Union; held out to employees that it had reassigned supervisors because of employee complaints; and told employees they were not permitted to even speak to one another because they might be talking about the Union. Judge Robert-

son also found that Respondent issued warnings to and discharged employees because of their activities on behalf of the Union and because of testimony they had given to the Board during the investigation of prior unfair labor practice charges. Judge Robertson's decision is now pending before the Board.

D. *The November 1991 Layoffs*

On November 13, within 1 week after giving critical testimony against Respondent at the unfair labor practice trial before Judge Robertson, Johnny Gervin and another employee were laid off. On November 14, Bobby Rutter, a union sympathizer, and another employee were laid off. On November 18, Bobby Richardson, one of the primary union activists, and three other employees were laid off. In spite of past practice, and in spite of the employee handbook, seniority was not used as the basis for selecting employees who were laid off. In December 1991, 26 more employees were laid off. In January 1992, 16 additional employees were laid off. Again seniority was not used as the basis for selecting employees who were laid off.

According to Respondent, job performance was the basis for selecting employees laid off in November and December 1991 and January 1992. This claim is discussed in detail below. As these layoffs are discussed, it is important to note that counsel for General Counsel does not contest the economic justification or need for layoffs during the late fall and early winter of 1991–1992. However, counsel for General Counsel does assert that Respondent discriminatorily selected employees for layoff and used the occasion of the November layoff to rid itself of the union adherents. To this extent, therefore, counsel for General Counsel does contest both the need for, i.e., the timing of, and the selection process used in the November layoff.

The record reflects that during 1990 and throughout much of 1991, Respondent enjoyed a substantial increase in business. Respondent hired many new employees. Gradually, Respondent expanded from a three-shift, 6-day-per-week operation to a four-shift, 7-day-per-week continuous operation. The print department, color shop, and print finishing departments converted to this four-shift schedule in September 1990. The preparation, finishing, and inspection departments were converted to the four-shift schedule in February 1991. It was not until September 1991 that the dye house department went to the same four-shift schedule. Respondent's employee complement expanded from approximately 250 employees in March 1990 to a peak of approximately 330 employees in September 1991.

During and after August 1991, business orders declined. In August, Respondent's largest customer for fabrics produced in the dye house department ceased all orders. Nevertheless it was in September 1991 that Respondent expanded the dye house department to a four-shift operation. Respondent's President Will Hopper, Human Resources Director Dave Parsons, and Director of Plant Operations Mike Gillespie discussed whether to keep the full complement of employees and operate the plant fewer days per week or whether to lay off employees and return to a three-shift operation. Hopper testified:

> We felt that if we could maintain at least a six day schedule—which would give the employees thirty-six hours, that they could sustain that for some reasonable period of time. Reasonable being that we were trying to get to the end of the calendar year of '91 before we had to do anything more drastic in the hopes that business would improve and the economy would improve. . . .
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> We made a decision that as far as the printing portion of the plant is concerned—the print side of the plant, that we would try to hold onto our entire workforce until we reached January of '92. And, if business had not have picked up at that point, then we would go through a curtailment and lay off a shift of employees. We also had a different situation really in the dye house where the business—the reduction in business was more drastic than it had been in the printing business.
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> Right at the time that the dye house got staff for four shifts, seven days a week—as business was fairly soft, right at that point and time—in fact in that same month of August and early September, we lost the biggest customer that we had in the dye house. That customer was responsible for running thirty-five to forty percent of our total production in that department. We lost that account . . . in August of '91.

Nowhere does Respondent offer any evidence of a change in the level of business or in its operations which necessitated or even precipitated a layoff in November, only days after the unfair labor practice trial before Judge Robertson. Whatever drastic business events occurred in the dye house took place in August 1991. Yet in September 1991 the dye house was changed to a four-shift operation. Nothing of any drastic nature occurred between then and the layoff in November 1991. Hopper himself admits that as early as September 1991 a decision was made to try to maintain the full complement of employees working a somewhat reduced schedule until January 1992. Respondent offers no evidence of any event which might have specifically precipitated the need for a layoff in November. Other evidence, discussed in greater detail below, also evidences that the November layoff occurred quite precipitously.

E. *December 1991 and January 1992 Layoffs and January 1992 New Hires*

At some point Respondent began to prepare for the possibility that layoffs would be necessary in early January 1992. As indicated, Respondent decided not to follow its own layoff procedure set forth in the employee handbook. Instead, it decided to label the anticipated reduction in force as ''permanent'' and to select employees for layoff on the basis of ''job performance.'' To that end, Respondent had its legal counsel prepare an evaluation form which could be used to rate each employee in a quantitative manner. The evaluation form was supplied to Respondent by counsel in late November 1991. Thus, although Respondent had reason to believe as early as September 1991 that future layoffs were probable and although Respondent enlisted counsel to prepare and provide an evaluation form which would be used to rate all employees, Respondent nevertheless effectuated the November layoffs even before counsel was able to provide the evaluation form. Once again it must be observed that Respondent

has shown no business justification or need for rushing the November layoff in this manner.

Once the rating evaluation form was provided to Respondent by counsel, a form was completed for each employee in the plant. While Parsons admitted that in November, Respondent laid off employees by department, in December 1991 and January 1992 Respondent laid off employees according to their individual jobs, with higher evaluated employees being retained and lesser evaluated employees being terminated. Hopper admitted that Respondent waited until January 1992 to reduce the plant from four shifts, 12 hours per day, to three shifts, 8 hours per day.

Although Respondent chose to label the November and December 1991 and January 1992 layoffs as ''permanent'' and therefore terminate employees, the record reflects that the reduction in force in late 1991 was not so different from other reductions in force as to make it obvious why Respondent chose to treat it so differently. The March 1990 layoff involved 50 employees. It was essentially the same size and therefore just as dramatic as the December 1991 and January 1992 layoffs combined. Nevertheless, seniority was used for the March 1990 layoff. Indeed, even after that layoff, Respondent published its employee handbook in which it specifically stated that layoffs would be by seniority. Although Respondent suggest that the layoff procedure set forth in the handbook is limited only to ''temporary layoffs,'' nowhere does the handbook state or infer any distinction between temporary and permanent layoffs. Nor has Respondent shown any particular business reason for treating the December 1991 and January 1992 layoffs as permanent rather temporary as in the past. While Respondent argues that it treated the layoffs as permanent because it did not know when employees might be recalled, the layoff procedure spelled out in the employee handbook specifically anticipates layoffs which might last up to 6 months. Exhibits introduced by counsel for General Counsel reflect that as early as February 1992 Respondent began to hire new employees into production and maintenance jobs, including jobs in the dye house, set-making department, and print finishing department. In the 1 month period from March 2 to April 3, 1992, Respondent hired four new employees to work in dye house jobs. During the first 4 months of 1992, Respondent hired 22 new employees, 16 of whom were hired to fill production and maintenance jobs.

F. *The Choices of Gervin, Rutter, and Richardson for Layoff*

Hopper testified that Respondent used employee ''job performance'' as the basis for the November layoff. Having said that, the record nevertheless reflects that it was not job performance but attendance which Respondent relies on for having chosen Gervin for layoff. Director of Human Resources Dave Parsons admitted that Respondent did not notify or warn the employees prior to implementing the new ''performance'' layoff criteria. Supposedly Respondent decided to reduce the number of employees in the dye house. As indicated earlier, Respondent made this decision to lay off by department although later in December 1991 and January 1992 it laid off employees by individual jobs. Dye house employees rarely get performance warnings because material which is misdyed can be bleached and redyed. Therefore, in evaluating dye house employees, Respondent looked at other factors.

Gervin was employed as a jet operator in the dye house at the time of his layoff. He had also worked as a set-maker for 2 years prior to his transfer to the dye house. As argued by Respondent, Gervin's attendance was the worst in the department. Gervin had received two warnings for excessive absences in 1991. Be that as it may, Gervin was not in a position in mid-November to be terminated pursuant to Respondent's attendance policy. According to Respondent, Frank Lowry, department head of the dye house, reported to his Supervisor Bill Roberts that one jet machine operator from each of the four shifts could be eliminated and still meet production needs. Parsons gave Lowry a list of four names, supposedly people who were expendable. Only two of these people, however, Gervin and James Howard, were actually laid off. The other two jet operators were transferred to other jobs.

On November 13, Gervin was informed of his layoff by Supervisor Mike Skipper as Skipper gave Gervin his paycheck. Gervin testified credibly that as Skipper was giving him the paycheck, Skipper stated that Respondent should have moved Gervin back to the set-maker department instead of laying him off, and that he (Skipper) didn't understand it. Skipper acknowledged that Gervin should have been moved to the set-making department because he had more seniority than the other employees in this area. It is apparent that Respondent did not even share with supervisors the different standards it was using to effect the November layoff. This fact is simply one more indication that Respondent acted precipitously in making that layoff.

Respondent has offered no compelling reasons why a layoff was effected in mid-November 1991, just days after the unfair labor practice trial before Judge Robertson, why it ignored its own stated policy regarding layoffs, why it chose to treat those layoffs as permanent unlike layoffs in the past, or why Respondent was suddenly willing for the first time to give up not only more senior but more experienced employees. In short, all of Respondent's reasons for effecting a November layoff, or for choosing Gervin, fail to withstand scrutiny. At every turn the record supports a conclusion that Respondent hastily decided on the November layoff and used it as an excuse to rid itself of certain union adherents, particularly Gervin who had just given damaging testimony against Respondent in the unfair labor practice trial before Judge Robertson.

Bobby Rutter, also laid off in November, had been employed in the print-finishing department for 4 years. Rutter primarily operated equipment known as the ''Arioli steamer,'' but he was also experienced in the operation of a high-temp steamer and the rope washer. While Rutter was not particularly active during the union campaign, he did support the Union and told his supervisor so. Rutter testified credibly and without contradiction that during the early part of the union campaign in 1990, Supervisor Charles Smith approached him in the work area and asked Rutter how he felt about the Union. Rutter told Smith that he supported the Union.

On November 14, Rutter was informed by Supervisor David Ellis that he was being laid off. Ellis told Rutter that he had one point, i.e., one performance warning, against him and that his seniority did not matter. Rutter, who had the sec-

ond highest seniority in his department, acknowledged that he had received a written warning in August for defective cloth. Parsons admitted that there were other employees in the print-finishing department who had been issued written warnings during the past year and were not laid off. Indeed, the record reflects that at least two employees in the print-finishing department who were junior to Rutter had received written warnings for running defective cloth, the same thing for which Rutter received his warning, but were retained. While Hopper testified that the complexity of the department and the equipment within the department demanded that employees who could operate multiple pieces of equipment and who were the most qualified employees be retained, the choices of Richardson and Rutter for layoff belie this position. In its posttrial brief, Respondent even argues that certain employees were retained while others were laid off because those retained were capable of operating equipment which was not even being used at the time. This argument, that certain employees were kept because they might be needed in the future, represents circuitous logic undermining any layoff decision.

Employee Bobby Richardson was one of the most active union supporters, and this was well known to Respondent. In fact, Richardson was prohibited by his supervisor from attending the captive-audience meetings held by corporate president Hopper during the campaign for the stated reason Richardson had made up his mind, and so there was no need for him to go to these meetings. Respondent admits this fact.

Richardson had been employed by Respondent since 1978 and had worked in the print finishing department for 6 years. He had also worked in the preparation department for 1 year and in the warehouse for 4 years. Richardson was the most senior employee in the department at the time he was laid off/terminated in November. He worked as the exit operator on the rope-loop machine, a position of considerable responsibility since the person doing this job must check the quality of the cloth, draft paperwork, and log information into a computer connected to the machine.

On November 18, Richardson was notified by Supervisor Ellis that he was being laid off. When Richardson asked why, Ellis stated that he did not know anything about it and referred Richardson to Parsons. Richardson testified credibly that his own immediate supervisor, Furney Jarman, also told Richardson that he did not know why Respondent was laying off Richardson, and that Respondent was making a big mistake. Again the evidence indicates that in November Respondent did not share its reasons for laying off employees even with its own supervisors.

On November 18, Richardson also met with Parsons about his layoff. Parsons told Richardson that he was being laid off because of his work record, and specifically because Richardson had received two written performance warnings within the past year. These warnings had been issued on January 23 and April 17, and Richardson pointed out to Parsons that he had not received a written warning within the past 6 months. Parsons responded that the Company was going on the record within the past year. Richardson pointed out to Parsons that he had seniority over all the other employees in the department, and that some of the employees had only 2 or 3 months' seniority at the time. I credit Richardson that Parsons responded he could not hold that against those less senior employees.

Richardson testified credibly that after being laid off, he returned to his work area and noticed that Supervisor Jarman was in the process of training employee Eric Scott to perform Richardson's job as exit operator on the rope-loop machine. Prior to that time, Scott had filled the middle position on that machine. Respondent argues that Richardson should be discredited because records reflect Scott worked on the rope-loop machine beginning May 15, 1991, and was still on the machine prior to the November 1991 layoff. These facts do not discredit Richardson who testified that Scott was being moved from one position on the machine, the middle position, to Richardson's position as the exit operator. Richardson testified that Scott had been employed by Respondent only 3 months at the time of Richardson's layoff. Records reflect that in fact Scott had worked for Respondent 6 months. Richardson testified credibly that while Scott was being trained to do Richardson's old job, he also observed that employee Benny Whitley had taken over Scott's old job as middle man. While Richardson testified that Whitley had only worked for Respondent 1 month, records reflect that Whitley had actually been working 4 months. Whitley's 4 months and Scott's 6 months both pale in comparison to Richardson's 13 years, with the last 6 years in Respondent's print-finishing department. While Parsons testified that employees were only transferred to previously held jobs, I do not credit this testimony. I credit Richardson as to what he saw. Supervisor Sammy Hines acknowledged that Respondent had to train an employee to operate the exit end of the rope-loop machine after Richardson's layoff. I find that because of the layoff in November, certain print finishing department employees were transferred to jobs they had not previously held. This fact substantially undermines Respondent's argument that it retained the most qualified employees and gave particular weight to retaining employees who could operate multiple pieces of equipment.

Analysis And Conclusions

It is now well settled that in cases alleging violations of Section 8(a)(1) and (3) of the Act turning on employer motivation, the *Wright Line* tests are employed. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). *Wright Line* has made it clear counsel for General Counsel is not required to prove that ''but for'' union activity the employer would not have made the decision it did. Rather, the initial burden of proving a prima facie case requires that General Counsel demonstrate ''protected conduct'' was ''a motivating factor'' in the employer's decision. If this burden is met, the burden then shifts to the employer to show that the same action would have taken place even in the absence of protected conduct.

I find that counsel for General Counsel has met its burden of proof establishing that employee union activity was a motivating factor in Respondent's decision to effect a layoff in November 1991 and that it was also a factor in selecting certain employees to be laid off. At the beginning of August 1991, Respondent's business was thriving. Much of its operation had been converted from three to four shifts. Its employee complement had been and was continuing to increase. In August, however, Respondent suffered a major economic setback when one of its largest customers ceased all orders. Respondent's top management met to consider whether to lay off employees immediately or whether to try to continue

to operate as it was for some period, with hopes that the lost business might be replaced. Respondent decided on the latter option, to try to maintain its full employee complement at least until early 1992 in hopes of securing new business. Respondent even went ahead and expanded the dye house operation from three to four shifts in spite of having lost this major customer.

Respondent offered no evidence that there were any other major setbacks or changes in its operation after the November 1991 unfair labor practice trial before Administrative Law Judge Robertson. At that trial evidence was introduced that in response to employee union activity, Respondent had interrogated employees about their union activities; solicited employees to withdraw union authorization cards; prohibited employees from distributing union leaflets during nonworktime in nonwork areas; threatened employees that they would work less hours because of the Union; threatened employees with loss of jobs; promised employees that it would listen to and work out their problems if they abandoned the Union; held out to employees that it had reassigned supervisors because of employee complaints; threatened employees that it would be futile to support the Union; threatened employees that it would close its doors over the Union; and issued warnings to and discharged employees because of their activities on behalf of the Union and because they had given testimony to the Board during the investigation of prior unfair labor practices. One of the critical employee witnesses to testify against Respondent was dye house employee Johnny Gervin.

Once it became clear a layoff in late 1991 or early 1992 would be advisable, Respondent decided to scuttle its established practice of laying off employees by seniority. Instead, Respondent decided to select employees for layoff based on what it considered to be merit, and Respondent's counsel began to prepare a form which Respondent would use to evaluate all employees in order to quantitatively assess merit. After the unfair labor practice trial, however, Respondent did not wait for counsel to develop this form. Instead, only days after the unfair labor practice trial had concluded, Respondent began to lay off employees, starting first with employee Johnny Gervin who had given critical testimony not just against Respondent in general but against Corporate President Will Hopper as well. Within a matter of only a few days, Respondent continued by laying off a group of employees which included two known union supports, one of whom had been so active on behalf of the Union he had been prohibited from attending captive audience meetings held by Respondent with employees.

When one looks at the standards which Respondent claims to have used in choosing which employees to lay off and which employees to keep, it becomes even more clear that union activity was a key factor in selecting employees for the layoff. Respondent's asserted reasons for laying off certain individuals while retaining others simply does not withstand scrutiny and is so illogical as to itself suggest an unlawful motive. Respondent claimed that it tried to retain employees who could run multiple pieces of equipment. At the same time, Respondent laid off, actually terminated, experienced employees who were capable of exactly that while replacing them with relatively new employees who had to be trained in order to even perform the job. In deciding which employees to terminate and which employees to keep, Respondent gave preference to employees who were so new that they had not even been employed for the whole review period which Respondent was using as the basis for evaluating employee qualifications. Last but not least, when Respondent was confronted with the fact that certain employee union activists were terminated while other employees with the same number of performance warnings were retained, Respondent claimed to have kept those other employees because they were capable of operating machines which were not even being used. Time and time again Respondent's purported explanation for terminating union supporters while retaining other employees is proven to be utterly illogical at worst and circuitous at best. For all these reasons, counsel for General Counsel has established a strong prima facia case that employees' union activities were a motivating factor in both Respondent's decision to effect a layoff in November and in Respondent's choice of certain employees to be terminated. At the same time, and for much the same reasons, Respondent has failed to show that the named discriminatees would have been laid off/terminated even if they had not engaged in union activity or supported the Union. Accordingly, I find that by laying off/terminating Bobby Richardson, Bobby Rutter, James Reid, and Melvin Wright, Respondent violated Section 8(a)(1) and (3) of the Act.[1]

CONCLUSIONS OF LAW

1. Respondent, Goldex, Inc. is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. By laying off/terminating Bobby Richardson, Bobby Rutter, James R. Reid, and Melvin Wright because employees engaged in activities on behalf of, and supported the Union, Respondent thereby violated Section 8(a)(1) and (3) of the Act.

4. The unfair labor practices which Respondent has been found to have engaged in, as described above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of

[1] Because the parties settled allegations involving Johnny Gervin and counsel for General Counsel withdrew those allegations from the complaint, I make no finding that Gervin's termination violated the Act. While there is no evidence that Reid and Wright engaged in union activity or otherwise supported the Union, the record reflects and I have found that the November layoff was itself precipitated by employee union activity in general and specifically by the unfair labor practice hearing before Administrative Law Judge Robertson. There is no need to show that each and every employee selected for the layoff was chosen because of individual union activities or sentiments. The entire group of employees laid off in November was discriminated against, including Reid and Wright as well as Rutter and Richardson. Other employees laid off in November were not named in the complaint, and I therefore make no finding regarding them.

the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Goldtex, Inc., Goldsboro, North Carolina, it officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off/terminating employees because employees engage in activities on behalf of, or support for, Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Bobby Richardson, Bobby Rutter, James R. Reid, and Melvin Wright immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges.

(b) Make whole Bobby Richardson, Bobby Rutter, James R. Reid, and Melvin Wright for any loss of earnings or benefits they may have suffered by reason of the discrimination against them by paying them a sum of money equal to the amount they normally would have earned from the date of said discrimination to the date of Respondent's offer of reinstatement, less net income earnings, with backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Expunge from its files any reference to the layoff/termination of Bobby Richardson, Bobby Rutter, James R. Reid, and Melvin Wright and notify them in writing that this has been done and that evidence of the unlawful terminations will not be used as a basis for future personnel actions against them.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Goldsboro, North Carolina facility copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT lay off/terminate employees because they engage in activities on behalf of, or support, Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Bobby Richardson, Bobby Rutter, James R. Reid, and Melvin Wright immediate and full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges.

WE WILL make whole Bobby Richardson, Bobby Rutter, James R. Reid, and Melvin Wright for any loss of earnings or benefits they may have suffered by reason of the discrimination against them by paying them a sum of money equal to the amount they normally would have earned from the date of said discrimination to the date of Respondent's offer of reinstatement, less net income earnings, with appropriate interest.

WE WILL expunge from our files any reference to the layoff/termination of Bobby Richardson, Bobby Rutter, James R. Reid, and Melvin Wright and notify them in writing that this has been done and that evidence of the unlawful terminations will not be used as a basis for future personnel actions against them.

GOLDTEX, INC.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''